

SENATE No. 1677

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone Creem

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to sentencing laws.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Cynthia Stone Creem	First Middlesex and Norfolk
Patricia D. Jehlen	Second Middlesex
Carl M. Sciortino, Jr.	34th Middlesex
Elizabeth A. Malia	11th Suffolk
Kay Khan	11th Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO SENTENCING LAWS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. There shall be a commission to study the issue of prison overcrowding, the threat overcrowding poses to public safety and to make recommendations for the reduction in the population of the commonwealth's prisons, houses of corrections and jails. The commission shall include and be co-chaired by the senate and house chairs of the joint committee on public safety. The commission's other members shall be the secretary of public safety, the commissioner of the department of corrections, the president of the Massachusetts Sheriff's Association, and a representative of the Massachusetts Correctional Legal Services.

SECTION 2. Section 129D of chapter 127, as appearing in the 2004 Official Edition, is hereby amended by striking out, in line 14, the words "two and one-half days" and inserting the following words:-

three days

SECTION 3. Section 129D of chapter 127, as so appearing, is hereby further amended by striking out, in line 19, the words "seven and one-half" and inserting the following words:-

ten days

SECTION 4. Chapter 276, as appearing in the 2004 Official Edition, is hereby amended by striking out section 42 and inserting the following new section:-

Section 42. If it appears that a crime has been committed and that there is probable cause to believe the prisoner guilty, the court or justice shall, if final jurisdiction is not exercised, admit the prisoner to bail, if the crime is bailable and sufficient bail is offered; otherwise, except as provided for in section 16 of chapter 125, such prisoner shall be either committed to jail or placed under electronic supervision by the sheriff until trial. If a prisoner cannot offer sufficient bail, the court may place them under electronic supervision by the sheriff as an alternative to being committed to a jail.

SECTION 5. Section 57 of chapter 276, as so appearing, is hereby further amended by inserting in line 9 after the words “or witness to bail” the following words:-

or electronic supervision by the sheriff

SECTION 6. Section 57 of chapter 276, as so appearing, is hereby further amended by inserting in line 13 after the words “to take bail” the following words:-

or placed on electronic supervision

SECTION 7. Section 32H of chapter 94C, as appearing in the 2004 Official Edition, is hereby amended by striking out, in line 13, the word “parole,” and is hereby further amended by inserting at the end of said section the following paragraph:-

Notwithstanding any general or special law to the contrary, a person convicted of violating any provisions of sections 32, 32A, 32B, 32E, 32F, and 32J of chapter 94C of the General Laws, who is serving a sentence where two-thirds of the maximum term of imprisonment imposed is less than the mandatory minimum sentence required under that section shall be eligible for parole after serving two-thirds of the maximum term of imprisonment imposed.

SECTION 8. Notwithstanding the provisions of sections 32, 32A, 32B, 32E, 32F, and 32J of chapter 94C of the General Laws, or any other general or special law to the contrary, persons serving mandatory minimum sentences for violations of the above referenced sections as of July 1, 2007 shall be eligible for parole after serving two-thirds of their maximum sentence.

SECTION 9. Chapter 279 of the General Laws, as so appearing, is hereby amended by inserting after section 27 the following section following section:—

Section 28. For all sentences to incarceration for a period of twelve months or more which are imposed in accordance with the sentencing guidelines as established in this chapter, there shall be imposed a period of post-incarceration supervision. The period of post-incarceration supervision shall be imposed as follows: a period of 6 months for a sentence with a maximum term greater than or equal to 12 months but less than 30 months; a period of 12 months for a sentence with a maximum greater than or equal to 30 months but less than 60 months; and a period of 24 months for a sentence with a maximum greater than 60 months. The total term of incarceration for the offense plus any additional commitment for a violation of a condition of post-incarceration supervision that does not otherwise constitute a new offense, shall not be greater than the maximum term fixed by statute for the governing offense. During the period of

post-incarceration supervision, the prisoner shall be subject to the supervision of the Parole Board under such terms and conditions as established by the Board.

The post-incarceration supervision period shall be deemed completed if the prisoner completes the sentence to incarceration while on parole, if the prisoner is granted a certificate of termination of sentence pursuant to G.L. c. 127, § 130A, if the prisoner is subject upon release from custody to lifetime parole pursuant to section 133C of chapter 127, or if upon completion of the sentence the prisoner is immediately committed to a sentence of incarceration, to the custody of any other state or federal authority, or to the custody of immigration authorities. The post-incarceration supervision shall be stayed for any period the prisoner is in custody pursuant to any order of custody under chapter 123A. The post-incarceration supervision period shall be deemed completed upon commitment pursuant to section 14 of chapter 123A. In all other circumstances, the period of post-incarceration supervision shall commence upon discharge from the sentence.

During the period of post-incarceration supervision, the prisoner shall be subject to the jurisdiction of the parole board in accordance with section 130 of chapter 127. The prisoner may be supervised in another jurisdiction in accordance with sections 151A through 151L of chapter 127 and shall be considered on parole for the purposes of such supervision. By a majority vote of a panel of the parole board after a hearing and for good cause, the parole board may terminate the period of post-incarceration supervision at any time before completion.

An individual who violates a condition of post-incarceration supervision shall be subject to the provisions of section 149 of chapter 127. Upon a first violation, the prisoner may be incarcerated for a period no greater than two months or the maximum remaining period of post-incarceration

76 supervision, whichever is less, if such violation does not otherwise constitute a criminal offense.
77 Upon a second violation, the prisoner may be incarcerated for a period no greater than six
78 months or the maximum remaining period of post-incarceration supervision, whichever is less, if
79 such violation does not otherwise constitute a criminal offense. Upon a third or subsequent
80 violation the prisoner, may be incarcerated for a period no greater than twelve months or the
81 maximum remaining period of post-incarceration supervision, whichever is less, if such violation
82 does not otherwise constitute a criminal offense. If such violation otherwise constitutes a
83 criminal offense, said period of incarceration shall be served on and after any sentence received
84 for commission of the new offense. In the event that the prisoner has been convicted of more
85 than one offense, post-incarceration supervision may be imposed if the maximum sentence on all
86 offenses has not been served.

87 Notwithstanding Section 23 of Chapter 279, where the defendant is sentenced to the house of
88 correction, the total term of incarceration for any offense plus any additional commitment for
89 violation of a condition or conditions of post-incarceration supervision pursuant to section 17 of
90 chapter 211G shall not exceed the longest term fixed by law for the punishment of the crime of
91 which the prisoner has been convicted or if the defendant is serving a sentence after being
92 convicted of only one offense, two and one half years, whichever is less.

93 SECTION 10. Section 25 of chapter 279, as so appearing, is hereby amended by inserting
94 after the word “sentenced” in line 8 the following words:— in addition to two years of post-
95 release supervision to be served when the habitual offender is released from prison,
96 notwithstanding that the combined total of years of the term of imprisonment and the post-
97 release supervision exceeds the maximum term fixed by law. During the period of post-release

supervision, the offender shall be under the jurisdiction and supervised by the parole board pursuant to the provisions of sections 128 through 151 of chapter 127.

SECTION 11. Section 130 of chapter 127 of the General Laws, as so appearing is hereby amended by striking out the first sentence and inserting in place thereof the following three sentences:— No prisoner shall be granted a parole permit merely as a reward for good conduct but only if the parole board is of the opinion that there is a reasonable probability that, if such prisoner is released, in light of appropriate conditions and community supervision, he will live and remain at liberty without violating the law and that his release is compatible with the welfare of society. In making this determination, the board shall consider whether, during the period of incarceration, the prisoner has participated in available work opportunities and education or treatment programs, and demonstrated good behavior. The board shall also consider whether risk reduction programs made available through collaboration with criminal justice agencies would minimize the probability of the prisoner re-offending once released.

SECTION 12. Chapter 276 of the General Laws, as so appearing, is hereby amended by adding, after section 87, the following new section:-

Section 88. The Sheriff of any county and in the case of women who are committed as pretrial detainees to the Massachusetts Correctional Institution at Framingham, the commissioner of correction, subject to rules and regulations established in accordance with the provisions of this section, may permit a detainee, committed to a jail awaiting disposition of any criminal matter, except those being held for offenses listed in this section, or may permit a person committed to the jail for contempt of court, to be classified to a pretrial diversion program operated by the Sheriff's Office in the county where the court that committed the detainee is sitting.

The Sheriff may extend the limits of the place of confinement of a detainee for the purpose of participation in this program and shall establish a classification system to determine the suitability of detainees who may be potential participants in this program. A person permitted to be away from the jail due to participation in this program may be accompanied by an employee of the Sheriff's Office in the discretion of the Sheriff or designee of the Sheriff.

For the duration of their participation in the program, the detainee shall be deemed to be in custody as a pretrial detainee for the purpose of receiving credit pursuant to Chapter 127 Section 129B and Chapter 299 Section 33A toward any sentence they may receive, and may be charged with escape pursuant to Chapter 268 Section 16 should they leave the place they are classified to pursuant to their participation in the program without authorization and with no intent to return or should they escape from custody while they are being transported pursuant to their participation in the program. Additionally for the duration of their participation in this program only, the detainee may receive additional deductions from any sentence that may be imposed in the case they were committed on, for participation in work, education, or treatment programs designated by the Sheriff pursuant to Chapter 127 Section 129D.

No detainee who is charged with murder, any offense that carries the possibility of a life sentence, a violation of section thirteen, 14, 15, 15A, 15B, 16, 17, 18, 18A, 19, 20, 21, 24B, 25, or section 26 of chapter 265, or section 17, 34, or 35, of chapter two hundred and seventy-two, or for an attempt to commit any crime referred to in said sections shall be eligible to participate in the program. No sex offender or sexually dangerous person as defined in section 1 of chapter 123A, or any person who is charged with committing a sexual offense as defined in said section

141 1, or any person who violates section 24B of chapter 265 shall be eligible to participate in this
142 program.